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IN THE
COURT OF APPEALS OF INDIANA

CHARLES DOWELL, VIRGINIA DOWELL, TIM HESTER, RHONDA HESTER, CAROL LAUGHLING, PATTI POLUS, DARIN ODLE, DEBORAH ODLE, HAROLD HAZELGROVE, LINDA HAZELGROVE, NANCY BAPST, MARCELLA MYERS, EDWARDS MYERS, and SUSAN VAN KLEY,

Appellants-Intervenors,
vs.

MARY SCHEURICH, ROBERT VAN MEERTEN RICHARD E. MAXWELL, RONALD P. McILWAIN,

No. 37A05-0701-CV-19

Appellees-Defendants,	)
	)
and	)
	)
SUE ANN BELL, Trustee of the Dorothy Jean Sorenson Trust, DOROTHY JEAN SORENSON, MICHAEL D. WILLIAMS, and M.D. WILLIAMS ENTERPRISES, INC.,	)
	)
Appellees-Plaintiffs.	)

APPEAL FROM THE JASPER SUPERIOR COURT
The Honorable Robert W. Thacker, Special Judge
Cause No. 37D01-0308-PL-326

July 26, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellants-intervenors Charles Dowell, et al. (collectively, the intervenors), appeal the trial court's denial of their motion to intervene in an action regarding the grant of a building permit that was initially brought by appellees-plaintiffs/property owners Sue Ann Bell, et al. (collectively, the plaintiffs). The intervenors argue that their motion should have been granted because their interests were directly affected by an agreed judgment involving the plaintiffs and the appellees-defendants, Mary Scheurich—Jasper County's Director of Planning and Development (Director)—and other county officials, (collectively, the defendants). Specifically, the intervenors contend that the trial court erred in denying their motion because they were neighboring property owners and the prior judgment adversely

affected their property rights. Concluding that the intervenors are collaterally estopped from challenging the judgment, we affirm the judgment of the trial court.

FACTS

The intervenors are residents of Jasper County who own property in the Sculley Square Subdivision (Sculley Square). All of the intervenors live in Sculley Square. Appellee-plaintiff Bell is the trustee of the Dorothy Jean Sorenson Trust (the trust), which owned certain real estate in Sculley Square (the Sorenson property). Sorenson is the sole beneficiary of the trust.

On April 30, 2003, M.D. Williams Enterprises, Inc. (Williams Enterprises) conveyed the Sorenson property to the trust. Prior to that conveyance, Sorenson entered into a contract with Williams Enterprises for the construction of a home on the real estate. The residence to be constructed was a modular home, as defined and built in accordance with the state building codes. Thereafter, Williams Enterprises applied for, and was granted, a building permit by the Director for construction of the residence. Construction commenced on May 2, 2003.

On June 5, 2003, Louis Polus, a resident of Sculley Square, filed an appeal before the Jasper County Board of Zoning Appeals (BZA), appealing the Director's approval and issuance of the building permit with regard to the Sorenson property. Although a hearing was conducted on June 16, 2003, on Polus's petition, no decision was rendered at that time. Thereafter, on July 14, 2003, the Director completed a final inspection of the real estate, and the residence qualified for a certificate of occupancy. The certificate was issued on July 18,

2003. However, Polus again appealed to the BZA. Following a hearing in that appeal, the improvement location permit was revoked on July 22, 2003.

On August 21, 2003, Bell, Sorenson, and Williams Enterprises filed a petition and application for writ of certiorari in the Jasper Superior Court, seeking reversal of the BZA's revocation of the permit. The action named the Director and other county officials as defendants in the action. Polus and other property owners in Sculley Square were joined in the action as adverse parties. Several of the adverse parties were eventually dismissed by stipulation because they did not wish to participate further in the action. The remaining adverse parties participated in the litigation until January 18, 2005, at which time they were dismissed from the litigation at their request.

On June 28, 2005, Sorenson, the Director, and the other county defendants entered into an agreed judgment, which reversed and remanded the BZA's decision to revoke the improvement location permit. Under the terms of the judgment, the Director was to issue a new location permit as well as an occupancy permit for the Sorenson property. On July 14, 2005, the intervenors who had previously asked to be dismissed from the action filed a motion for leave of court to intervene in the action. They also petitioned to vacate the agreed judgment and to declare the settlement null and void. In essence, those parties claimed that they had a property interest in the BZA's decision that revoked the building permit. They further maintained that the agreed judgment was void due to a lack of an executive session and/or public meeting in violation of the Indiana Open Door Law.

Following a hearing on July 25, 2005, the trial court issued an order denying the

motion for leave to intervene, finding that the prospective intervenors were not necessary parties entitled to intervention as a matter of right in Sorenson's appeal. The trial court's judgment was not appealed. However, on August 24, 2005, the prospective intervenors filed a separate action in the form of a complaint for a declaratory judgment. This action again sought to have the agreed judgment entered in the prior case declared void. The complaint further sought the trial court's mandate that the county defendants litigate the Sorenson appeal and not review, vacate, or rescind the BZA's original decisions with regard to Sorenson's location permit. On October 12, 2005, the county defendants filed a motion to dismiss the new action, and a special judge granted that motion on March 24, 2006. This group of prospective intervenors then appealed to this court. In an unpublished memorandum decision, we affirmed the dismissal of the action, determining that the agreed judgment was not subject to collateral attack. Polus, et al. v. Scheurich, et al., No. 37A03-0607-CV-329, slip op. at 7-8 (Ind. Ct. App. Nov. 17, 2006).

Thereafter, on July 27, 2006, a second group of prospective intervenors—the appellants in this case—who were not specifically named as petitioners in the July 14, 2005, motion to intervene, filed a motion for leave of court to intervene and a petition to vacate the agreed judgment. The intervenors sought to have the settlement between the plaintiffs—Sorenson and Bell—and the county defendants declared null and void. These prospective intervenors were also Sculley Square neighbors and landowners. Several of them were directly related to those individuals in the prior case. The matter was heard on September 6, 2006, at which time the trial court requested the parties to submit proposed findings of fact

and conclusions of law. Thereafter, on November 6, 2006, the trial court denied the neighbors' motion to intervene. While the trial court did not issue specific findings, it determined that an intervenor may not use a motion under Indiana Trial Rule 24[1] to relitigate matters already determined. It was also observed that the intervenors merely restated the allegations of the motion to intervene that had been denied on July 25, 2005, and the prospective intervenors were not necessary parties that were entitled to intervene.

The intervenors now appeal.

DISCUSSION AND DECISION

I. Standard of Review

We initially observe that a trial court's decision to grant or deny a motion to intervene is reviewed for an abuse of discretion. State v. Ind. Waste Sys., Inc., 603 N.E.2d 181, 187 (Ind. Ct. App. 1992). Upon review, the facts alleged in the motion to intervene must be taken as true. Id. To constitute an abuse of discretion, a trial court's decision must be clearly against the logic and effect of the facts and circumstances or any reasonable and probable inference to be drawn. Developmental Disabilities Residential Facilities Council v. Metro. Dev. Comm'n, 455 N.E.2d 960, 965 (Ind. Ct. App. 1983).

However, we further note that an intervenor may not use a Trial Rule 24 motion to intervene to relitigate matters already determined in a case. Panos v. Perchez, 546 N.E.2d 1253, 1254 (Ind. Ct. App. 1989). In other words, an intervenor must "take the case as he

[1] Pursuant to Indiana Trial Rule 24(B)(2), an applicant may be permitted to intervene in an action when the applicant's claim or defense has a question of law or fact in common with the proceeding and intervention will not prejudice or unduly delay the adjudication of the rights of the original parties.

finds it and cannot change the issues." Cromer v. Sefton, 471 N.E.2d 700, 704 (Ind. Ct. App. 1984). Moreover, where intervention occurs after a judgment, the intervenor is bound by the judgment. Mercantile Bank of Ind. v. Teamsters, 668 N.E.2d 1269, 1271 (Ind. Ct. App. 1996). Intervention after judgment has been rendered is disfavored and should not be used to circumvent the general rule against collateral attacks on a judgment. Hiles v. Null, 716 N.E.2d 1003, 1005 (Ind. Ct. App. 1999).

II. The Intervenors' Claims

The intervenors contend, among other things, that the trial court abused its discretion in denying their motion to intervene because they have "a direct interest adversely [a]ffected by the reversal of the [BZA's] revocation of the . . . permit." Appellant's Br. p. 1. Moreover, the intervenors allege that their property interests were "not being adequately represented by the existing parties." Id.

Notwithstanding these claims, this court determined in Mercantile Bank that an intervenor is not permitted to relitigate issues already determined in a case. 668 N.E.2d at 1272. In Mercantile, a third party sought to intervene to challenge an agreed judgment previously entered into by two other parties. In determining that the motion to intervene was properly denied, the Mercantile court observed that permitting a party to intervene in order to attack an agreed judgment "would be eroding and undermining the cardinal principal of finality." Id. The court further commented that "if interpretation, review and appeal of agreed judgments are permitted, the entire purpose of agreed judgments is defeated." Id.

We further note that the doctrine of collateral estoppel applies in cases where a final judgment on the merits has been rendered and acts as a complete bar to a subsequent action on the same issue or claim. Millenium Club, Inc. v. Avila, 809 N.E.2d 906, 911 (Ind. Ct. App. 2004). When issue preclusion applies, the former adjudication will be conclusive in the subsequent action even if the two actions are on different claims. Sullivan v. Am. Cas. Co., 605 N.E.2d 134, 137 (Ind. 1992). In determining whether to permit the use of collateral estoppel, the court must determine whether the party against whom estoppel would be used had a full and fair opportunity to litigate the issue and whether it would otherwise be unfair to apply collateral estoppel. Meridian Ins. Co. v. Zepeda, 734 N.E.2d 1126, 1129 (Ind. Ct. App. 2000).

As noted above, the intervenors and adverse parties who filed the first motion to intervene all reside in Sculley Square. Appellants' App. p. 47. Over the course of four years, various individuals asserting the same claims with regard to the issuance of the permit have filed numerous motions, lawsuits, and appeals. The current motion to intervene and the original motion contain essentially the same allegations. Indeed, the intervenors here have alleged no change in circumstances that would permit them to raise issues that were not presented in the first motion. Further, the intervenors here make no argument that they were unaware of the prior proceedings in this case.

As our prior memorandum decision indicates, the individuals who filed the prior motion to intervene were not permitted to collaterally attack the agreed judgment in their separate litigation. Polus, slip op. at 7-8. Likewise, to allow the current intervenors to

prevail would permit them to collaterally attack the judgment in the case. Although the intervenors in this case were individuals other than those involved in the first case, their arguments and interests were the same. They are simply not entitled to continue to file new motions based upon new theories or attempt to relitigate issues that have previously been decided. Put another way, having failed to establish a basis for intervention in the first motion to intervene, the Sculley Square neighbors were not entitled to make the very same arguments for intervention a second time. That said, the time for finality has arrived, and we conclude that the trial court properly denied the motion to intervene.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.